UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

GLOUCESTER TERMINALS, LLC and its alter ego, TRANS OCEAN MARITIME SERVICES, INC. Employer and INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO Petitioner and INDEPENDENT DOCKWORKERS UNION, LOCAL NO. 1 Intervenor[1]	Case 4–RC–20613

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time employees, including inspectors, checkers/lashers, lashing crew, warehouse, forklift drivers, equipment operators, truck driver/trailer, driver/hostler, crane operators, foremen, maintenance mechanics, yard foremen, crew chiefs, warehouse foremen, green circle, and regular "casual" employees employed by

[1] Teamsters Local Union No. 929 (herein Teamsters Local 929) intervened at the hearing for the limited purpose of seeking an assurance that Petitioner was not attempting to represent employees covered by a separate bargaining agreement which Teamsters Local 929 currently has with the Employer. Having received that assurance, Teamsters Local 929 did not participate further in this proceeding and does not seek to represent the employees who are the subject of this petition.

the Employer at the Gloucester City, New Jersey marine terminal.[2] The unit is currently comprised of approximately 10 regular (red circle) and 16 regular casual (green circle) employees as well as approximately 180 casual employees. In its Petition, the Petitioner describes the Employer as Trans Ocean Maritime Services, Inc., d/b/a Gloucester Marine Terminal, Inc. and/or Gloucester Terminals, LLC. The Employer states that its proper name is Gloucester Terminals LLC (herein GLT) and admits that GLT is engaged in commerce. A hearing officer of the Board held a hearing in this matter and the parties filed briefs with me.

The parties disagree on the basic issue of whether the collective bargaining agreement between Gloucester Marine Terminals LLC (herein GLT) and Independent Dockworkers Union Local 1 (Dockworkers), effective by its terms from January 1, 2003 through December 31, 2007, is a bar to the instant petition. The Petitioner contends that GLT is a "reincarnation" or alter ego of Trans Ocean Maritime Services, Inc. (Trans Ocean), and as such, its contract with the Dockworkers cannot serve as a bar to processing this petition because it is a premature extension of a collective bargaining agreement effective by its terms from April 30, 2001 through April 30, 2003. The Employer and the Dockworkers contend that GLT is a *Burns*[3] successor to Trans Ocean and not its alter ego, that the 2003-2007 agreement is not a premature extension of the 2001-2003 agreement, and that the 2003-2007 agreement bars processing this petition.

The parties also disagree as to the eligibility formula used to determine the inclusion of the Employer's casual employees in the bargaining unit. The Employer contends that if an election is directed, employees who have worked 150 hours during the period from November 1, 2002 until the end of the payroll period ending immediately before issuance of any direction of election, should be included in the unit. The Petitioner contends that the number of hours worked should be 100 during the same period of time. The Petitioner's proposed unit would include approximately 200 employees, while the Employer's proposed unit would include approximately 170 employees. The parties agree that the Employer's busy season is generally between November 1 and May 15 each year.

I have considered the evidence and the arguments presented by the parties and I have concluded that GLT is an alter ego of Trans Ocean. I have found that the contract entered into by GLT and the Dockworkers is not a bar to the processing of the instant petition as it is a premature extension of the Dockworkers/Trans Ocean 2001-2003 agreement. With respect to the issue of eligibility, I have concluded that the Petitioner's suggested number of 100 hours worked from November 1, 2002 until the end of the pay period immediately preceding the date of this Decision and Direction of Election is consistent with the Board's approach in *Toledo Marine Terminals, Inc.*, 123 NLRB 583 (1959) and more appropriate in these circumstances than the 150 hours suggested by the Employer.

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[2] At the hearing, as noted above, the parties stipulated that the unit sought did not include employees in classifications currently represented by Teamsters Local 929 under a separate collective bargaining agreement with the Employer and also did not include 13 maintenance mechanics who are not currently represented by any labor organization. The Petitioner stated that it is seeking to represent the same employees covered under the collective bargaining agreement between Trans Ocean Maritime Services, Inc. and Independent Dockworkers Union Local 1, effective until April 30, 2003.

[3] *NLRB v. Burns International Security Services, Inc.*, 406 US 272 (1972).

To provide a context for my discussion of this issue, I will first discuss the alter ego relationship between Trans Ocean and GLT. Then, I will apply relevant case law to the facts and evidence presented at the hearing to support the alter ego finding and its consequent results. I will then discuss the basis for the formula governing the eligibility of casual employees.

I. THE ALTER EGO RELATIONSHIP BETWEEN TRANS OCEAN AND GLT

Trans Ocean is located at the Gloucester Marine Terminal (the Marine Terminal) on the Delaware River in Gloucester City, New Jersey. Trans Ocean began operating in 1993 in portions of the Marine Terminal that it leased from Holt Hauling and Warehousing Systems, Inc. (Holt Hauling).[4] Holt Hauling was controlled by Thomas Holt, Sr. In 2000, Thomas Holt Sr.'s sons, Leo Holt, Thomas Holt, Jr. and Michael Holt, purchased Trans Ocean either directly or through one or more intermediate entities.[5] The Holt brothers own equal shares in Trans Ocean. Leo Holt and Michael Holt became directors on January 4, 2000, and at some unspecified time prior to August 2002, Leo Holt became its President. In June 2002, Bruce Boyett became Trans Ocean's Director of Stevedoring and was the top manager on site until August 15, 2002. Mike Walls, senior supervisor, reported to Boyett.

Trans Ocean had direct contracts with steamship lines to provide stevedoring, terminal and warehouse services for general cargos north of the Walt Whitman bridge at or near Piers 7 and 7-A at the Marine Terminal. Trans Ocean also provided these services to ships on an ad hoc basis that came to the Marine Terminal in search of the lowest stevedoring rate they could secure. In addition, Trans Ocean also acted as a "bare bones stevedore" providing stevedoring services only, i.e. loading and unloading ships, at Piers 8 and 9. In bare bones stevedore situations, Trans Ocean had contractual relationships with Gloucester Marine Terminal, Inc. (GMT) and Gloucester Refrigerated Warehouse, Inc. (GRW), two entities owned by the Holt brothers.[6]

Holt Hauling was an affiliate of the Holt Group, Inc. (Holt Group), an entity in which Thomas Holt, Sr. had an ownership interest. The Holt Group filed for Chapter 11 bankruptcy on March 22, 2001.[7] Trans Ocean, GRW and GMT were not debtors in the bankruptcy proceeding. However, they did business with the Holt Group debtors, were creditors of the debtor companies, and were designated as related companies in the bankruptcy proceedings based on the Holt brothers' familial relationship to Thomas Holt, Sr.

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[4] The Marine Terminal, purchased by Holt Hauling many years ago, is heavily mortgaged by Industrial Development bonds (IDB). At the time of the hearing, a substantial amount of debt was secured by mortgages held by IDB bondholders.

[5] The record is unclear who owned Trans Ocean prior to 2000.

[6] GRW and Teamsters Local Union No. 929 are parties to a contract effective from July 1, 2000 to June 30, 2005 covering certain warehousemen and leadmen. The parties agree that the Petitioner is not seeking to represent these employees.

[7] There are numerous entities which are part of the Holt Group, including at least Marina Services, Inc., et al. f/k/a Murphy Services, Inc., Holt Cargo Systems, Inc. and Holt Hauling.

In April 2001, the Holt Group companies in Chapter 11 bankruptcy sought a $10 million dollar Debtor-In-Possession (DIP) loan. At the time the bankruptcy petition was filed, the debtors owed a group of banks, led by First Union, $62 million. In order to obtain a loan, First Union required collateral in the form of a guarantee of the $10 million DIP loan as well as the pre-petition $62 million debt. Trans Ocean, GMT and GRW, along with several other related but non-debtor companies, guaranteed the Holt Group companies' $10 million DIP loan and their pre-petition debt of approximately $62 million.

In order to have an entity available to either bid on assets coming out of the bankruptcy proceeding, or to engage in business relationships with the major creditors or bondholders who could potentially own assets related to the Marine Terminal as a result of the bankruptcy, the Holt brothers formed Gloucester Stevedores LLC, a limited liability company in October 2001. GLT's corporate attorney testified that the bondholders, either through foreclosure or a sale approved by the Bankruptcy Court, would become the owners of the Marine Terminal and that it was expected that Gloucester Stevedores LLC would enter into a contractual relationship with the bondholders to operate the Marine Terminal. On February 12, 2002, Gloucester Stevedores LLC changed its name to Gloucester Terminals LLC (GLT). GLT was capitalized but did not conduct any business at that point.

GLT was structured as a New Jersey limited liability company that was capitalized by its sole member and owner, Terminal Holdings, LP.[8] Terminal Holdings, LP is a Pennsylvania limited partnership with three limited partners, the Holt brothers, and three general partners, Aquila Holdings, Inc., Halcon Holdings, Inc. and Fuerte Holdings, Inc. The limited partners of Terminal Holdings, LP each own slightly less than one-third, for a total of approximately 99 percent. The three general partners own the remaining one percent. Aquila Holdings, Inc., Halcon Holdings, Inc. and Fuerte Holdings, Inc. are owned by Leo Holt, Michael Holt and Thomas Holt Jr., respectively, who also serve as their Presidents. Leo Holt is the manager of GLT and, according to GLT's corporate attorney, Leo Holt has the authority to operate the company much the same way as a President or CEO would operate a corporation, including the plenary authority over any contractual relationships entered into by GLT. The record evidence shows that Leo Holt has used the title of President of GLT and Michael Holt has used the title of Secretary of GLT.

At the end of May 2002, the Holt Group companies that were in bankruptcy converted from Chapter 11 to Chapter 7. Based on this development, First Union sought a judgment against the various guarantors of the DIP loans and pre-petition debt, including GRW and Trans Ocean. In mid-August 2002, First Union attached the bank accounts of Trans Ocean and GRW. On August 15, 2002, Trans Ocean ceased operating and GLT was activated.[9] GLT continued the operations of Trans Ocean and GRW without interruption.[10] According to GLT's corporate attorney, ships were in transit,

[8] Under the laws governing limited liability companies, members are treated as the equivalent of shareholders of a corporation.

[9] Trans Ocean still exists as a corporate entity.

[10] In May 2002, GMT went out of business and its employees became employees of GRW. Teamsters Local 929 became the representative of the former GMT employees. In August 2002, GLT became the employer of GRW's employees. These employees continued to be represented by Teamsters Local 929.

employees on the docks, and cargo in the warehouses had to be moved. Based on these circumstances, the attorney testified that the only appropriate thing to do was to continue operations in some form which did not include Trans Ocean. GLT was used to replace Trans Ocean.

Upon its activation in August 2002, GLT began collecting the accounts receivables of Trans Ocean and GRW, and from these collections paid Trans Ocean's and GRW's debts. Trans Ocean informed its customers that GLT would be acting as its "agent" in collecting receivables and paying debts. There is no record evidence reflecting the transfer of any assets or liabilities from Trans Ocean to GLT.

The equipment used by the Trans Ocean employees was the same equipment being used by the same employees under GLT. Large cranes owned or leased by Holt Hauling at the Marine Terminal were used by Trans Ocean and GLT. Most of the rest of the equipment used by Trans Ocean consisted of forklifts, some flat beds and yard hustlers. This equipment was owned by Express Equipment, a leasing and maintenance equipment company owned by the Holt brothers either directly or indirectly. Express Equipment either leased or licensed this equipment to Trans Ocean. When GLT came into existence, Express Equipment sold this same equipment to GLT. Stevedoring gear, namely slings, bridles, and hooks, was owned by Delaware Avenue Enterprises but was used by Trans Ocean pursuant to some arrangement with Delaware Avenue Enterprises. When GLT took over, it was allowed to continue to use this equipment owned by Delaware Avenue Enterprises. Delaware Avenue Enterprises is also owned by the Holt brothers.

In August 2002, Walter Curran began working as a consultant for GLT. Leo Holt retained Curran in connection with the start-up of GLT and the negotiation of collective bargaining agreements for GLT with the Dockworkers and Teamsters Local 929. Prior to July 2002, Curran was an employee and Director of the Holt Group. From 1989 until some unspecified date, Curran was responsible for the day-to-day operations of Holt Cargo Systems, Inc., (Holt Cargo), a terminal operator and stevedore company, which was a subsidiary of the Holt Group. Holt Cargo was also owned by Thomas Holt Sr.

In August 2002, Curran approached the Presidents of Teamsters Local 929 and the Dockworkers and informed them that GRW and Trans Ocean, the employers with which they had collective bargaining agreements, had their bank accounts frozen and that GLT would negotiate new separate contracts with each of them concerning the employees they represented.[11] In early September 2002, Curran and Boyett began negotiations on behalf of GLT with the Dockworkers for a collective bargaining agreement covering the former Trans Ocean employees.[12] Curran kept Leo Holt apprised of the status of negotiations and Leo Holt signed the GLT contract on January 30, 2003. The agreement

[11] For a short period during 1993, Teamsters Local 676 represented Trans Ocean's employees at the Marine Terminal. As a result of proceedings pursuant to Article XX of the AFL-CIO Constitution, Teamsters Local 676 withdrew from representing these employees. Thereafter, the Dockworkers was formed and it entered into a collective bargaining agreement with Trans Ocean, effective from December 30, 1993 to April 30, 2001. On April 25, 2001, Trans Ocean and the Dockworkers extended their contract to April 20, 2003.

[12] Boyett did not attend all negotiating sessions.

was retroactive to January 1, 2003 and is effective through December 31, 2007. Under this agreement, GLT is now in charge of hiring employees instead of the Union.[13] The grievance-arbitration procedure was streamlined, some work rules were changed, the drug and alcohol policy became restrictive, wages were raised, and a group of the regular employees who were performing work for the Employer were taken off the casual list and put on the seniority list with benefits.[14]

Some of the employees of Trans Ocean were not aware that the identity of their Employer had changed until they received a paycheck with a different employer's name. Employees employed by Trans Ocean in August 2002 were not required to complete new W-4 forms for GLT until in or around December 2002. GLT required that new W-4 forms be obtained from returning Trans Ocean employees and new employees. Some employees obtained 2002 W-2 forms from both Trans Ocean and GLT, but the record is unclear as to what periods of time each W-2 covered. An employee testified that starting in August 2002, he was paid by GLT checks signed by Leo Holt.

GLT made health and welfare contributions to the Teamsters Health and Welfare Fund for those employees who had been covered by the Dockworkers contract and on whose behalf contributions had been made while they were employed by Trans Ocean. The Dockworkers did not notify the Health and Welfare and Pension funds that there had been a change of employers from Trans Ocean to GLT either before or after the negotiation of the GLT contract.

At the hearing, the Employer stipulated that the work of the employees remained the same before and after August 15, 2002, and their seniority remained the same. These employees used the same equipment, had the same day-to-day supervision and management, and worked at the same location. GLT continued to service the same types of customers as Trans Ocean. It continued to enter into contracts with steamship lines to perform work at Piers 7 and 7A. It continued to provide stevedoring services handling the products of GRW's former customers who had formerly contracted with GRW. As GLT absorbed GRW, these entities became direct customers of GLT. Finally, GLT pursued the same type of ad hoc stevedoring services for passing ships that had been pursued by Trans Ocean. In its brief, counsel for the Employer conceded that GLT carried on substantially the same business in substantially the same location as had Trans Ocean.

Holt Oversight and Logistical Technologies, the entity that had provided administrative services for Trans Ocean, continued to perform administrative services and sales work for GLT.[15] The phone and fax numbers remained the same. Trans Ocean's former Director of Stevedoring, Bruce Boyett, issued warnings to employees on behalf of Trans Ocean on August 15, 2002, and on behalf of GLT on November 4 and 26, 2002. Boyett has also handled grievances on behalf of GLT since August 30, 2002. The grievance form identifies the Employer as Trans Ocean.

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[13] GLT included this provision in the contract it negotiated with the Union, but Union President Schofield, who performed this function for many years under Trans Ocean, was still performing this function for GLT at the time of the hearing.

[14] With respect to negotiation of the Teamsters Local 929 contract, the name of the Employer changed, but there were very few substantive changes and the term of the contract remained the same.

[15] Holt Oversight and Logistical Technologies is owned by the Holt brothers.

II. GLT IS AN ALTER EGO OF TRANS OCEAN

As previously stated, the Petitioner contends that the GLT/Dockworkers collective bargaining agreement is not a bar to processing the instant petition because GLT is an alter ego of Trans Ocean, GLT is bound to the Trans Ocean/Dockworkers agreement, and the agreement was prematurely extended by GLT and the Dockworkers. Conversely, the Employer and the Dockworkers take the position that GLT is a *Burns* successor to Trans Ocean, that it was privileged to negotiate its own collective bargaining agreement with the Dockworkers and that its collective bargaining agreement bars processing the instant petition.

While the issue of alter ego status often arises in an unfair labor practice context, I am not precluded from determining alter ego status in a representation case. See e.g. *Western Pipeline, Inc.*, 328 NLRB 925, 926 (1999) (Board finds that employer is not an alter ego of another employer and is therefore not signatory to any contract which would bar petition); *All County Electric Co.*, 332 NLRB 863 (2000) (Board finds that one company is an alter ego of another and that union's legitimate pursuit of grievance under applicable contract does not raise a question concerning representation; *Elec Comm Inc.*, 290 NLRB 705 (1990) (Board finds no alter ego relationship, and finds that a question concerning representation exists).

When two facially different companies are found to be alter egos of one another, the collective bargaining agreement of one actively binds the other. *E.G. Sprinkler Corp.*, 268 NLRB 1241, 1244 n. 1 (1984). This is in contrast to the conclusion drawn when a new company is determined to be a separate employing entity under *NLRB v. Burns International Security Services, Inc.*, supra and is not obligated to assume its predecessor's collective bargaining agreement.

In *Howard Johnson Co., Inc. v. Detroit Local Joint Executive Board, Hotel and Restaurant Employees & Bartenders International Union, AFL-CIO*, 417 U.S. 249 (1974), the Supreme Court, in an action arising under Section 301 of the Labor Management Relations Act, distinguished a successor from an alter ego. Based on the facts in that case, the Court categorized Howard Johnson as a successor to members of the Grissom family because Howard Johnson was the bona fide purchaser of the assets of a restaurant and motor lodge previously operated by the Grissoms. Id at 250. In footnote 5 of its decision, the Court contrasted such a situation from one in which the succeeding corporation is "merely a disguised continuance or alter ego of the old employer." According to the Court, alter ego cases involve a "mere technical change in the structure or identity of the employing entity, frequently to avoid the effect of the labor laws, without any substantial change in its

ownership or management."[16] As the Court stated, in these circumstances, the Courts have had little difficulty in holding that the successor employer is in reality the same employer as the predecessor, and that the successor is subject to all the legal and contractual obligations of the predecessor. *Howard Johnson*, supra at n. 5. The Court then concluded that in the case *sub judice*, there was no suggestion that the sale of the restaurant and motor lodge by the Grissoms to Howard Johnson was in any sense a paper transaction without meaningful impact on the ownership or operation of the enterprise as Howard Johnson had no ownership interest in the restaurant or motor lodge prior to the transaction. The Board has recognized that substantially identical ownership is the major factor distinguishing alter ego cases from successor cases. See, e.g. *Cofab, Inc.*, 322 NLRB 162 (1996).

When called upon to make an alter ego determination, the Board finds such status when two enterprises have "substantially identical" ownership, management, business purpose, operation, equipment, supervision, customers, and premises. *Fugazy Continental Corp.*, 265 NLRB 1301 (1982), enfd. 725 F.2d 1416 (D.C. Cir. 1984); *Fallon-Williams, Inc.*, 336 NLRB No. 54 (2001); *Kenmore Contracting Company*, 289 NLRB 336 (1988); *Advance Electric*, 268 NLRB 1001 (1984); *Crawford Door Sales Company*, 226 NLRB 1144 (1976); *Marquis Printing Corporation*, 213 NLRB 394 (1974). The Board looks at whether the employers constitute "the same business in the same market" as well as the nature and extent of the negotiations and formalities surrounding the transaction. E.g. *Fugazy*, supra. While an illegal motive in creating the alter ego company is an additional factor often considered by the Board, its absence does not preclude a finding of alter ego status. *Allcoast Transfer*, 271 NLRB 1374 1378-1379 (1994), enfd. 780 F.2d 576 (6th Cir. 1986). The mere presence of a legitimate business reason for a change in corporate status does not preclude the finding of an alter ego relationship. See *Walton Mirror Works, Inc.*, 313 NLRB 1279 (1994) (predecessor company closed by a government taxing authority); *Michael's Painting, Inc.*,. 337 NLRB No. 140 (2002) (one of the reasons for operating successor company was to avoid substantially higher insurance premiums that would have been charged to predecessor). See also, *Oklahoma Fixture Company*, 333 NLRB 804 (2000) (Board finds alter ego even absent evidence that the successor company was formed to avoid the predecessor's labor law obligations); *Stardyne Corp.*, 41 F.3d 141 (3d Cir. 1994) (Court adopts Board's view that motive is a relevant, but not determinative, factor in alter ego analysis).

In examining common ownership, the Board focuses on substantial identity in the ownership of the predecessor and successor companies. *Advance Electric*, supra at 1004 (1984). Where other alter ego factors exist, ownership of two companies by members of the same immediate family is "substantially identical" ownership. *Kenmore Contracting Co.*, 289 NLRB 336, 337 (1988) enfd. 888 F.2d 125 (2d Cir. 1989); *J.M. Tanaka Construction Inc.*, 249 NLRB 238, 242 n. 29 (1980) enfd. 675 F.2d 1029 (9th Cir. 1982). In fact, the Board has stated that an alter ego relationship could exist even with no evidence of common ownership. *All Kind Quilting, Inc.*, 266 NLRB 1187 n. 4 (1983). In alter ego cases, the Board looks beyond the identity of the formal owners of two companies

[16] As the First Circuit emphasized in *NLRB v. Hospital San Rafael, Inc.*, 42 F.3d 45, 50 (1st. Cir. 1994), the Supreme Court in *Howard Johnson*, chose the word "frequently" rather than "always" which establishes that unlawful motive is merely one factor in the alter ego analysis which need not always be present in order to find alter ego status.

and focuses upon the identity of individuals who actually control these entities. See *NLRB v. Omnitest Inspection Services*, 937 F.2d 112 (3d Cir. 1991). For example, the Board found substantially identical common ownership in *Hospital San Rafael*, 308 NLRB 605, 614, 617, 621 (1992) enfd. *NLRB v. Hospital San Rafael*, 42 F.3d 45 (1st Cir. 1994) based on its conclusion that the same individuals owned 87 percent of the stock in the predecessor corporation and 60 percent of the limited partnership, which succeeded that operation, and effectively controlled both entities.

With respect to ownership of Trans Ocean and GLT, I find that the Holt brothers were the owners of Trans Ocean and they are the owners of GLT, albeit in a different legal structure. The Holt brothers, and in particular, Leo Holt, have exercised significant control over the major decisions of both companies.[17] They decided to activate GLT in mid-August 2002 to perform essentially the same services as previously provided by Trans Ocean. In addition, Leo Holt hired Walter Curran as a consultant in connection with the start-up of GLT and in order to negotiate collective bargaining agreements with the Dockworkers and Teamsters Local 929. Leo Holt signed the collective bargaining agreement for GLT, signed legal documents on behalf of Trans Ocean and GLT, and as the manager of GLT, functioned effectively as its CEO.[18]

With respect to management and supervision, Leo Holt was the President of Trans Ocean and he functions as GLT's CEO. Prior to August 2002, Bruce Boyett was Director of Stevedoring for Trans Ocean and is now Director of Stevedoring for GLT. Boyett was the management representative involved in daily labor relations activities such as grievance handling and discipline for Trans Ocean and he performs this function for GLT. Boyett attended some negotiation sessions with Curran and Curran reported the status of negotiations to Leo Holt. The same supervisors who supervised the employees of Trans Ocean are supervising the same employees of GLT. The Employer argues that the entities were not managed by substantially identical individuals because Leo Holt exercised no control over the operations of either Trans Ocean or GLT, and Walter Curran, who played no role in Trans Ocean, now actively manages GLT. However, the record evidence shows that Leo Holt, with his brothers, controlled and managed both entities. Curran testified that his role in managing GLT was determined by Leo Holt who hired him as a temporary consultant.

The record reveals that Trans Ocean performed stevedoring and terminal warehouse services at Piers 7 and 7A and acted as a bare bones stevedore at Piers 8 and 9 at the Marine Terminal. GLT is performing the same work at these piers at the Marine Terminal. While customers may change due to competitive ongoing bidding of jobs, the same basic work performed by the Trans Ocean employees at the Marine Terminal is essentially the same work being performed by GLT. GLT is operating at the

[17] The Employer's corporate attorney conceded that the Holt brothers, as the owners of Trans Ocean, had ultimate control over that company.

[18] I reject Counsel for the Employer's argument that there is not substantially identical ownership. In this connection, Counsel asserts that the controlling ownership of Trans Ocean, a corporation, was held by 2 out of 3 of the Holt brothers, while the controlling interest in GLT is ultimately held only by Leo Holt unless he consented to his removal based on the unique features of limited partnership law. As the Employer's corporate attorney testified, the three Holt brothers agreed to appoint Leo Holt as the manager (or CEO) of GLT, and the three of them could agree to appoint someone else as manager if they so choose. Based on this, I am satisfied that the three Holt brothers controlled and owned Trans Ocean and GLT.

Marine Terminal in the same basic way that Trans Ocean operated with the same employees and the same equipment and the same supervisors.[19]

The Employer cites *NYP Acquisition Corp.*, 332 NLRB 1041 (2000) in support of its assertion that there is not a substantially identical business purpose in this matter because GLT is an interim operator of a business and not a long-term operator of the same business as Trans Ocean. In *NYP*, the New York Post daily newspaper had filed for bankruptcy. Rupert Murdoch, an unrelated independent media mogul, incorporated Acquisition, which was a subsidiary of one of its holdings, NAPI, for the sole purpose of exploring whether it should purchase the Post and manage it while it was determining whether certain obstacles could be overcome to enable the purchase.[20] Apparently satisfied that the obstacles could be overcome, NAPI created a new subsidiary, Holdings, to actually purchase the Post. Holdings and the Post then negotiated an asset purchase agreement and the bankruptcy court approved it. The Board found that Holdings was not an alter ego of Acquisitions because Acquisitions was formed with the limited business purpose of exploring the possibility of purchasing the Post while Holdings was created solely to purchase and operate the Post.

In the instant case, the Holt brothers owned Trans Ocean and they own the Employer. The Employer performs the same type of work with the same employees, supervisors, and equipment[21] as had its predecessor company Trans Ocean. Unlike the situation in *NYP*, the Holt brothers put GLT into operation and seamlessly began operating at the Marine Terminal in essentially the same fashion as Trans Ocean. That GLT may be in business as a temporary solution for the purpose of providing services to the bondholders does not detract from the conclusion that its current purpose is to operate the same stevedore business as did Trans Ocean. Thus, I find that the *NYP* case is distinguishable.

Trans Ocean did, and GLT does, operate out of the same location. The Employer's administrative and sales services continue to be provided by Holt Oversight and Logistical Technologies.

The Employer and Trans Ocean shared substantially identical customers. At Piers 7 and 7A both the Employer and Trans Ocean provided stevedoring, terminal and warehouse services to both steamship lines pursuant to pre-arranged contracts and other ships calling at the marine terminal with no prior arrangement. The Employer services some but not all of the lines and ships serviced by Trans Ocean at the Marine Terminal. However, as the Board has held, it is the class of customers, and not their precise identity which is the focus of the "customer" factor in alter ego analysis. See e.g. *Better Building Supply*, 283 NLRB 93, 96 (1987) enfd. 837 F.2d 377 (2nd Cir. 1988); (BRT's roofing

[19] In its brief, the Employer concedes that "GLT carried on substantially the same business in substantially the same locations as had Trans Ocean."

[20] The obstacles included obtaining an FCC waiver, discovering whether the paper could be run in a financially advantageous way, and getting the bankruptcy court's approval for the potential purchase.

[21] The record evidence shows that some equipment, e.g., forklifts, flat beds and yard hustlers, used by Trans Ocean was leased from Express Equipment and later purchased by the Employer from Express Equipment. The fact that this equipment was leased by Trans Ocean but owned by the Employer does not detract from the conclusion that the equipment is substantially identical in both operations. This is particularly true where Express Equipment, Trans Ocean and the Employer are owned and controlled by the Holt brothers.

customers substantially identical to its predecessor BBSC, as both serviced the same class of customers in the same market even though both companies did not remove and replace roofs for the exact same customers); *Johnstown Corporation*, 313 NLRB 170 (1993) enfd. 41 F.3d 141 (3d Cir. 1994) (alter ego found where successor serviced some of predecessor's customers in same specialized laser field).

At Piers 8 and 9, the Employer performed the same bare bones stevedoring operation as performed by Trans Ocean. During the lifetime of Trans Ocean and GRW, Trans Ocean's "customer" was GRW for whom it was providing stevedoring operations, mostly by unloading fruit in the winter and spring months. Upon GRW's and Trans Ocean's demise, the Employer absorbed the operations of Trans Ocean and GRW. Accordingly, the Employer now has a direct relationship with the customers who called at the Marine Terminal and delivered the fruit which was to be unloaded. Based on this change, the Employer asserts that Trans Ocean's customer was GRW, that GRW's customers were the steamship lines which deliver the fruit and as a result, there is no substantial identity of customers. As was the case with Pier 7 and 7A, Trans Ocean served the same class of customers, as did GLT, i.e., entities that received stevedoring services at the Marine Terminal for winter fruit. Accordingly, I find a substantial identity of customers.

As to the motive for establishing the Employer, the record evidence shows that the Holt brothers established a new entity which could continue Trans Ocean's stevedoring, terminal and warehousing services at the Marine Terminal when Trans Ocean's bank accounts were attached by First Union Bank. Accordingly, it has not been demonstrated that the formation of the Employer represented an attempt to avoid Trans Ocean's labor law obligations.

Based on the record evidence and the case authority cited above, I find that GLT is the alter ego of Trans Ocean.

III. GLT'S CONTRACT WITH THE DOCKWORKERS DOES NOT BAR THE ILA'S PETITION

As an alter ego of Trans Ocean, the Employer is subject to all of the legal and contractual obligations of Trans Ocean. Accordingly, it was bound to the collective bargaining agreement in effect between Trans Ocean and the Dockworkers and the contract bar effect of that agreement. See *E.G. Sprinkler Corp.*, supra.; *cf. Western Pipeline*, supra. That agreement was in effect until April 30, 2003. Board law is clear that when parties execute an amendment or a new contract containing a later termination date during the term of an existing contract, the contract is deemed prematurely extended. *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1001-1002 (1958). This is true even when the premature extension, as here, is embodied in an entirely separate agreement with new collective bargaining provisions. See *Auburn Rubber*, 140 NLRB 919 (1963); *Stubnitz Greene Corp.*, 116 NLRB 965 (1957). *M.C.P. Foods*, 311 NLRB 1159 (1993). In *M.C.P. Foods*, the Board agreed with a Regional Director's determination that the stock purchaser of the predecessor company was the same employing entity as the predecessor and not a *Burns* successor as contended by the union in that matter. Accordingly, it distinguished *Ideal Chevrolet*, 198 NLRB 280 (1922), a case relied upon by

the Employer in the instant case, in which the Board found that a new contract signed by a genuine successor was a bar to a petition. In contrast, the agreement entered into by the stock purchaser with the Union was found in *M.C.P. Foods* to be a premature extension of the contract in existence between the original entity and the union and did not serve as a bar to a decertification petition filed during the open period of the original agreement. In essence, the Regional Director concluded that under *EPE, Inc.*, 284 NLRB 191 (1987) enfd. in pertinent part 845 F.2d 83 (4th Cir. 1988) the new owners were bound to the same contractual obligations as the "predecessor" and the same effect under Board law, which that contract had on the decertification petition.

I find that the situation in *M.C.P.* is analogous to this case, in that I have found the Employer to be the alter ego of Trans Ocean and, thus, the same employing entity bound to the agreement between Trans Ocean and Dockworkers. When the Employer and the Dockworkers entered their agreement on January 30, 2003 retroactive to January 1, 2003, they were prematurely extending the Trans Ocean/Dockworkers agreement. The open period for the filing of a petition under the Trans Ocean/Dockworkers agreement was between January 31, 2003 and March 1, 2003. Thus, the ILA's petition herein, filed on February 27, 2003 was timely with regard to the existing contract in effect between the Employer and the Dockworkers.[22]

IV. ELIGIBILITY

With respect to the eligibility issue, the parties differed slightly in the number of hours which each suggested employees were required to work in order to be eligible to vote in any election. The Employer suggested 150 hours while the Petitioner suggested 100 hours. In *Toledo Marine Terminals, Inc.*, supra, the Board was faced with determining voting eligibility for stevedores who worked on a seasonal basis similar to the case before me. The Board examined the current and prior seasons to try to ascertain the percentage of employees who had worked in both seasons and what number of working hours per season captured a significant majority of those who had worked from one season to the next. In that 1959 case, 30 percent of employees worked 50 hours or more in the 1958 season. Of those, 80% had also worked in the 1957 season. Thus, the Board concluded that 50 hours was an appropriate eligibility cutoff number. Id. at 585. In performing a similar type of analysis, I find that approximately 40% of GLT's employees have worked or will have worked 100 hours by the end of this season, and 85% of them worked some hours for Trans Ocean last season. Thus, I find appropriate an eligibility formula which allows all employees who have worked 100 hours from the start of this season, namely November 1, 2002, to the end of the pay period immediately preceding the date of this Decision and Direction of Election to vote in this election.

V. CONCLUSIONS AND FINDINGS

[22] As I have concluded that the Employer is the alter ego of Trans Ocean, it is unnecessary for me to reach Petitioner's alternative arguments concerning the alleged failure to properly ratify the Employer/Dockworkers agreement.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error, and are hereby affirmed.

2. The Employer, Gloucester Terminals, LLC, and its alter ego Trans Ocean Maritime Services, Inc. is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees employed by the Employer at its Gloucester Marine Terminal, located in Gloucester, New Jersey, including casual employees as defined below, who occupy the following job classifications: inspectors, checkers/lashers, lashing crew, warehouse, forklift drivers, equipment operators, truck driver/trailer, driver/hostler, crane operators, foremen, maintenance mechanics, yard foremen, crew chiefs, and warehouse foremen; **EXCLUDING** employees currently represented by Teamsters Local 929, mechanics not currently represented by any labor organization, guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **International Longshoremen's Association, AFL-CIO or by Independent Dockworkers Union, Local No. 1 or by neither**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those employees in the unit who were employed 100 or more hours during the payroll period from November 1, 2002 until the end of the payroll period ending

immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman–Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within **7** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the ***full*** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **June 10, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it

has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EDT on **June 17, 2003.** The request may **not** be filed by facsimile.

Signed: June 3, 2003

at Philadelphia, PA

/s/
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

Classification Index Numbers
177-1633-7500
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347-4010-4033
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